

CONSERVATION COMMISSION
REGULAR MEETING AUGUST 16, 2011
TOWN COUNCIL CHAMBERS

These minutes are not verbatim, but represent a summary of major statements and comments. For minutes verbatim, refer to audiotapes on file in the Office of the Town Clerk. Audiotapes are retained for the minimum period required under the retention schedule as provided under Connecticut Law.

Chairman Pappa called the roll call at 7:01 p.m. and noted Commissioners Block, Byer, Forte, Igielski and Shapiro were present. Also present were Alternates Harlow, Turgeon and Zelek and Mr. Anthony Ferraro, Town Engineer.

NOTE: Chairman Pappa designated that Alternate Harlow would vote for Commissioner. Longo.

ITEM III
ACCEPTANCE OF MINUTES

Regular Meeting of July 19, 2011

Commissioner Igielski noted the following corrections:

- A. Middle of page 5---He noted Remark "F" should read "The storm water management plan...each basin (listen {listed} to audio tape...his remarks)."
- B. Bottom of Page 8---Remark by Alternate Zelek should read "Alternate Zelek asked what about...the potential impact (listen {listed} to audio tape... the conversation).
- C. Top of Page 9---Remark by Alternate Harlow should read "Alternate Harlow asked what about...the resource (listen {listed} to audio tape...of the conversation)."
- D. Middle of Page 9--- He noted Remark "B" should read "What percentage of fertilizers...in Long Island (listen {listed} to audio tape...of the conversation)."

Motion made by Commissioner Igielski to accept the minutes as corrected and was seconded by Commissioner Shapiro. There was no discussion. Vote was 5 yes, 0 no, 2 abstentions (Block and Forte) and the motion was carried.

ITEM IV
PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Ms. Rose Lyons, 46 Elton Drive noted the need to secure better microphones.

ITEM VA (Continuation of Public Hearing)

Application 2011-02, Russell Road, North of Old Highway

Commissioner Block said he listened to the tape of last month's meeting and read the report. Therefore, he would vote at tonight's meeting.

Attorney Tom Regan, representing Toll Brothers, noted tonight's meeting is a continuation of the public hearing. Several presentations would be made tonight to address questions that have been raised at previous meetings.

Mr. Raymond Gradwell, PE, Project Engineer, BL Companies noted that two (2) additional lots have been removed from the plan leaving a new total of 62 Lots. The removal of Lots 11 and 12 would now allow the 1740 square foot wetland (Wetland No. 3) in the northeast corner of the property to remain intact.

Chairman Pappa asked if the change was prudent or in response to a comment made by Mr. Bob Schatz TP&Z (Commissioner)? Mr. Bradwell responded it was a team decision.

Attorney Regan noted with the change, the only portion of the site where a regulated (wetland) area that would have been affected (Wetland No. 3) would not now be filled in. The only (regulated) area affected now is the (100 foot) buffer.

Mr. Gradwell referring to the plan showed the areas of buffer impacts.

Alternate Zelek asked why change the plan now? Mr. Gradwell responded it eliminates the need of filling a wetland.

Attorney Regan said the reason for making the change was to eliminate the "ISSUE".

Alternate Harlow asked for the location of (new) wall(s) and fencing resulting from this change (Lots 11 and 12)? Mr. Gradwell referring to the plan showed the location of the walls and fencing.

Attorney Regan noted (in Connecticut) a wetland is defined by soil type and defined on a map. Therefore, it (Wetland 3) is a wetland.

Alternate Zelek asked why perform work in the buffer area? Attorney Regan responded per the Regulations, one can perform work in the upland review area as long as the work would not have an adverse impact on the (wetland) regulated area. However, the mitigation plan would still be done.

Commissioner Block asked after the retaining wall and fencing are put in, what state would the area be left in? Mr. Gradwell referring to the plan responded to the question. He noted

that any grading would slope down toward the wetland. He also noted that storm water would outlet into the wetland and build up to an elevation (of an existing saddle) and over flow into the detention basin.

Mr. Gradwell noted that he received a copy of the CERT Report Tuesday morning and spent a good part of the day preparing a report on storm water management and sedimentation and erosion control. He handed out a copy of his report to Commission members.

Mr. Gradwell noted the report relative to the storm water management recommended a seed mixture that should be used to improve the permeability of the bottom of the main detention basin. We have no problem with the recommendation. In addition, catch basins would have extra deep sumps and have a hood placed over the catch basin outlet pipe.

Mr. Gradwell noted the sedimentation and erosion control program would be done in two (2) phases and would include:

- A. The first phase would include the installation of diversion channels that would discharge into sediment traps that would be located in the area of a proposed detention basin. Sediment traps would also be installed at other location (s) as required by field conditions. A construction pad would be installed at the entrance into the property.
- B. The second phase would include the installation of a perimeter silt fence with perpendicular wings (made with silt fence) to control lateral flow. Where a slope exists between houses, a silt fence would be installed per DEP guide lines. Prior to the close out of the project, non detention temporary sediment traps would be removed. Sediment would be removed from all temporary traps and would include all detention basins; the ground would then be scarified and planted with seed except for the wetland basin where the special seed mixture would be used.

Mr. Gradwell said in conclusion that it was his conclusion that the comments in the (CERT) Report have been addressed as indicated in the presentation and notes.

Dr. Ronald Abrams Phd. in Ecology, a Masters in Biology entered the following remarks into the record relative to his proposed mitigation plan:

- A. Topography, wetland and proposed development maps were used to look for a potential mitigation site. The analysis resulted in three (3) potential sites.
- B. Each location went through a water shed analysis reviewed against a list of selected criteria.
- C. Site No.1 located in the southwest corner of the property between Basins 1 and 2, which is between the area of most activity, was selected for the mitigation site.

- D. The size of the new mitigation area would approximately 5840 square feet versus 1700 square foot wetland it would replace. The contributing water shed to the mitigation area would be 5.5 acres.
- E. Test holed were dug which revealed a cross section of 10 to 14 inches of organic soil with an underlying sandy soil.
- F. The water level within the mitigation area would fluctuate in depth.
- G. The soil characteristics of the soil on site can be made to match the soils required for the mitigation area.

Dr. Abrams passed a copy of his response to the CERT Report to Commission members and entered the following remarks into the record:

- A. A number of remarks in the commentary area are generalizations with no support.
- B. The Report took him (Dr. Abrams) to task for not considering the native finger nail clam in his assessment of vertebrae on site. Dr. Abrams said that he stood by his report.
- C. The Report states that that the mitigation area would be a vernal pool. This is not true. We are not building a vernal pool.

Commissioner Block asked Dr. Abrams what is your level of confidence that the mitigation site may imitate a vernal pool? Dr. Abrams responded between 90 and 95 percent per (Conn.) DEP guide lines. Dr. Abrams noted that one can not replace a vernal pool.

Commissioner Block asked if monitoring of the new area would be required to get it right? Dr. Abrams yes. It would take three (3) years to get it right.

Attorney Regan noted that the project would take five (5) years to complete. We are going to do the mitigation area even though Wetland 3 would be left in tact.

Alternate Harlow asked Dr. Abrams for a list of successful mitigation projects that he participated in? Dr. Abrams responded to the question (listen to audio tape for his response).

Attorney Regan noted that once the public hearing is closed, no new evidence can be entered into the record.

Dr. Abrams noted that the Report raised several question relative to the development of the mitigation area. CERT, at the time the Report was submitted, did not have access to the mitigation plan. The mitigation plan was submitted tonight and contains and addresses the questions.

Dr. Abrams said that he has worked with the landscape ecologist (who prepared this section of the CERT Report) on both sides of the fence. Basin 2 is classified as a Tier 1 Basin. A comment was raised on the impact on animals during construction of the mitigation area. He noted that the work should be done at the right time of the year and steps should be taken to discourage entrance (by constructing barriers) into the area.

Commissioner Block noted that on page 4 of the mitigation plan relative to Basin 2, it indicates the possibility of the leakage of phosphates into the wetland.

Mr. Gradwell noted that we followed the procedures outlined in the DEP Manual. Best management practices were used to include catch basins with deep sumps with hoods placed on the outlet pipe from the basin and a hydrodynamic separator. The dry detention basin is the largest of the basins in size with the utilization of infiltration into the ground.

Dr. Abrams said that once the (dry) basin is constructed according to the design, nature and the environment would take care of it through percolation. There should be no problem.

Mr. Ulrich LaFosse, a Geotechnic Engineer with GeoDesign, noted the issue to be addressed is; will the blasting associated with project have an adverse on the wetland? He also noted the issue is a complex question.

Mr. LaFosse noted that he has had 25 years of experience in this (specialized) field and entered the following remarks into the record:

- A. Fourteen (14) test pits were excavated in December 2010. There was 2 to 8 inches of soil above the rock which was impervious in nature. No ground water was observed in the pits. It should be noted that water might appear during the wet season.
- B. Rock cuts up to ten (10) feet would be required for the proposed road grades and an additional six (6) to eight (8) feet for house foundations. NOTE: The sanitary sewer installation could result in a deeper trench elevation.
- C. The installation of deep trench utilities could affect the natural ground water table. This condition could be addressed by installing check zones. These zones would consist of special impervious soils.

Chairman Pappa asked how often and how long would blasting activity occur on the site? Attorney Regan responded this area may fall under planning and zoning. We would be happy to answer questions related to the blasting operation.

Mr. LaFosse responded that we do not have an answer to the question at this time.

Mr. LaFosse, referring plan noted the red area is where blasting would occur and further noted that the blasting would be limited basically to one area of the site. The blue areas are where the fill material would put on the site. It is estimated that approximately 80,000 cubic yards would be involved.

Mr. LaFosse noted the blasting for a house foundation would take one (1) to two (2) days each.

Mr. LaFosse referring to a map reviewed the sequence of events that would be used during the general construction phase.

Mr. Gradwell noted that one time blasting would occur in the major area of cut and would include house foundations.

Commissioner Block asked that when blasting occurs at a depth of eighteen (18) feet, what would be the impact to the wetland? Dr. Abrams responded nothing should happen because the blasting activity would occur at a considerably higher elevation above the wetland.

Commissioner Block asked how much higher above the wetland? Dr. Abrams responded the wetland is 30 feet +/- below the blasting.

Mr. LaFosse noted the use of controlled blasting would result in a minimum to zero (0) impact outside of the wetland.

There was a general discussion on the blasting survey and issue of vibrations emanating from the blasting on the wetland (listen to audio tape for details of the discussion).

Alternate Zelek asked what is the impact of vibrations (from blasting) on the wetland? Mr. Fosse responded none.

Attorney Regan asked if any blasting would occur within the 100 foot area? Mr. Gradwell responded none (would occur).

Commissioner Block asked if the vibrations (from blasting) could crack the rock and remove the ground water or perforate the wetland? Mr. LaFosse responded that it would not happen.

Dr. Abrams noted that that the soil (of the wetland) receives its water (from precipitation) and the soil hold it. He further noted soils are not affected by blasting. In addition the soils rely on precipitation, not subsurface ground water. Mr. LaFosse noted that a "Hydrogeology Study" has not been done. He noted that it is not common to ask for such a study up front. He stands on his remarks on the record.

Alternate Zelek asked what the blasting impacts would be on Basin 3? Dr. Abrams responded that he never got down to rock.

Mr. LaFosse endorsed Dr. Abrams response.

Chairman Pappa asked if blasting could cause damage where the wetland would not retain water? Dr. Abrams responded no.

Mr. La Fosse noted that blasting would not have an adverse impact on the wetland.

Mr. Gradwell noted that the grading of the land would change the surface flow pattern from what exists today.

Commissioner Block noted that the Dru Report did not say much outside of amphibians. Ms. Jodi Chase said her report was responsible for the other wild life.

Ms. Chase noted that the wild life in the appendix of the CERT Report were the same species that she had found. There was nothing of note or concern.

Commission went into recess at 8:50 p.m.

Commission came out of recess at 9:00 p.m.

Attorney Regan noted that the applicant has completed its presentation on the application.

Alternate Turgeon noted that not all members received copies of the handouts tonight. Attorney Regan said that additional copies would be made available.

REMARKS FROM PUBLIC

NOTE: Remarks in this section represent a summary of comments related to the Inland Wetland and Watercourses Regulations of the Town under which the application will be evaluated by the Commission (listen to audio tape for complete details of each individual response).

Ms. Myra Cohen, 42 Jeffrey Lane noted that the CERT Report was received and made available to Commission members and the public today. The Report contains new information and is technical in nature. The public hearing should be left open. She read a portion of the Report relative to the impact that the project would have on wild life into the record (listen to audio tape for her full remarks). She posed the question—"How good is the guarantee that blasting would have no adverse effect"?

Mr. Stanley Sobieski, 26 Deepwood Drive noted that the Town has had a poor record relative to the maintenance of Town owned detention basins. If the Home Owners Association is to assume the responsibility for the wetland basin, how would the Commission guarantee that the maintenance activities would be done in accordance with the approved maintenance plan? What would the Town do if the Association does not meet its maintenance responsibilities down the road?

Mr. Ralph Testa, 82 Willard Avenue noted that only a short period time was available to address the CERT Report. There is an adverse impact because 33 acres are being impacted by the project. Cardinal Falcons have been observed nesting on the mountain. No construction activities should take place during the mating season.

Dr. Stanley Schleifer, Ph.D, Redding, CT entered his resume into the record. He noted that he is talking as a private citizen and is not representing anyone in this matter. He noted that the upland review area exists because water caused by precipitation exceeds infiltration into the ground. If this did not happen, there would be no wetlands (perched water). He noted that a detention basin does not reduce total run off; it only maintains pre development (peak) flows (over an extended period of time for various design storms). Dr. Schleifer also noted that the rock in the area is basalt trap rock, the joint run vertically and one can not predict the effects of blasting. He also noted that run off would be directed into the wetland on Lots 11 and 12. The run off would build up in the wetland and over flow into a detention basin and (it has been implied) will not effect the function of the wetland. The public hearing should be kept open.

Mr. Christopher Brown, 121 Putman Street, Hartford, CT noted that impermeable surfaces (pavement) collect toxins from vehicles to include oil, anti-freeze etc. and end up in (surface) run off entering into the wetland. This matter should be looked into in more detail.

Ms. Gail Raducha, 38 Schoolhousexing, Wethersfield, CT noted (an applicant's representative) that the CERT Report contained a number of remarks in the commentary area are generalizations with no scientific backing. She also noted that the applicant only has worked on smaller projects. They lack experience on a project of this size. There is a difference between an animal adapting to walkers and campers versus blasting activities. Finally, it took nature many years to create a vernal pool and the applicant is only going to take five (5) years to replace it.

Ms. Maureen Klett 104 Harold Drive noted the CERT Team is a group of experts in related fields who volunteer their time. The Report has been done at no expense to the Town and therefore could be said to be objective in nature. She noted that Page 22 of the Report brings out several issues on vernal pools.

Ms. Holly Harlow, 11 Edmund Street noted that relative to the dry detention pond next to the wetland, the EPA states that they are good for flood control but would not be the best BMP to use if pollution is an issue. She expressed a concern about the fence around the wetland and the impact to the wild life that would use it. The CERT Report should serve as a primer on why the development of Cedar Mountain is a short sighted approach to development of the site. The Commission should adopt the directives in the Report as actual procedures when developing your decision.

Ms. Gail Budrejko, 21 Isabelle Terrace noted that the Home Owners Association would be responsible for maintenance of the wetland detention basin and mitigation area. The Association would only be as good as its leadership and financial stability. What assurances would the Town have that the Association would held accountable and that responsibility would not fall on the Town.

Mr. Gary Bolles, 28 Burden Lane said that blasting could create fissures in the rock below the wetland and drain it. The applicant should contact the Army Corps of Engineers and request a Nation wide Permit to protect them selves.

Ms. Tracy Lawlor, 37 Sunset Road said that she had a problem with the Home owners Association being held responsible for environmental issues. Who would supervise the Association to make sure the work would be done right. She reminded Commission members that the CERT Report was prepared by volunteers and is an objective Report as opposed to the experts who were paid by the applicant. The applicant says this is private property. This is our back yard, I think, we do have some ownership.

Mr. Michael Fox, 1901 Main Street noted that he was Chairman of the Towns' Environmental Quality Commission and said that his Commission would like to review the application at our next meeting and possibly offer some constructive comments. The public hearing should be kept open.

Dr. Sue Tennoio, 28 Lincoln Road, West Hartford, CT offered general remarks into the record.

Mr. Bernard Cohen, 98 Whitewood Road noted that there is an article on the wild life of Cedar Mountain on the Towns' Park and Recreation web site.

Mr. Roy Zartarian, 25 Stuart Street noted that environmental issues go beyond wetland issues and salamanders and involve all wild life species. He noted on Page 33 of the CERT Report it was noted development of the upland area would have an adverse impact on wild life. There would also be direct and indirect impacts to the wetland. Mr. Zartarian, using photos taken by him of Cedar Mountain noted that the project would destroy or severely disrupt the nesting habitat of the song sparrow, wood duck, common raven, Indigo Bunting, warbler, yellow warbler, etc.

Dr. Kathleen Clark, 50 Grandview Drive noted she was a veterinarian, and took exception with a statement by Dr. Abrams that salamanders are hardy creatures. She noted that amphibians are hardy but their thin skin is susceptible to toxins. In addition ponds and pools are attractive nuisances.

Ms. Rose Lyons, 46 Elton Drive entered several general remarks into the record. She noted if the public hearing is closed, the Commission should put the reason (s) on the record.

Ms. Allison Clark, 25 Wilbur Drive entered a letter from Ms. Julie Victoria, certified wild life biologist, who is retired from DEP on vernal pools (read letter for details). She noted that the CERT Report noted many deficiencies relative to vernal pools. It was also noted in the Report that the (main) wetland (basin) is given the highest rating. She also noted that the Report should be given more credit (than applicant's expert{s}) because it was done by volunteers.

Mr. Ron Corcoran, 167 Roosevelt Street, Hartford, CT noted the wild life habitat is healthy as it stands now. He made reference to a DEP memorandum and noted that if a new mammal species is introduced and is on an accepted list, provision (s) to be made to protect that habitat.

Mr. David Tatum, 29 Camp Avenue, a member of the Towns' Environmental Quality Commission, noted that time is needed to review the CERT Report. The Report raises issues about activities within the 50 and 100 foot buffer areas and their affects on the Wetland (2 and 3). Can we rely on the Home Owners Association to carry out the maintenance activities within the regulated areas?

Mr. Bruce Whinchell, 48 Tinsmithxing, Wethersfield, CT noted the public did not have an opportunity to review the Report. The applicant took out of the Report what they wanted and left the rest alone. The Home Owners Association is not capable (to carry out maintenance activities within the regulated areas).

Ms. Ellen Thibeault, 101 Hartford Avenue read a letter into the record from Mr. Rick Spring (listen to tape for contents of the letter).

Mr. Gradwell provided the following responses to comments made under Public Remarks:

- A. Clear cutting of the mountain---Forty four (44) acres of the site would be preserved as open space.
- B. Maintenance responsibilities---The Town would be responsible for catch basins, pipes and hydrodynamic separators. The Home Owners Association would be responsible for the detention pond inlet structure and outlet control structure. A maintenance schedule is included on the plans.
- C. Detention pond designs---the detention ponds are designed for the 100 year storm event that is in accordance with Town standards
- D. Fencing---Fencing would be placed around all detention ponds.
- E. Storm water design (requirements)---Conforms with Town of Newington and Conn. DEP Regulations.
- F. Open Space---Forty four (44) are being donated to the Town.

Dr. Abrams provided the following responses to comments made under Public Remarks:

- A. Dr. Kathleen Clark's letter warranted a response---In 1998 an ecologist symposium was held on the "Global Decline of Amphibians". Amphibians are water living habitat. Over a ten (10) period of time, it was determined that amphibians were subject to a viral disease across the planet. However, the effect was not so much in this area (listen to audio tape for more specific details).
- B. The Harper Publication which was used to analyze the population conservation of amphibians on the property was not criticized in the CERT Report.

- C. Reference was made to the use of vague and general statements made at last month's meeting---These remarks were valid. However, tonight we were more specific with the availability of the mitigation plan.
- D. The suggestion was of securing an Army Corps of Engineers Nation Wide Permit--- Since the federal government jurisdiction ends at the wetland line, there is no federal jurisdiction here.

Mr. LaFosse provided following responses to comments made under Public Remarks:

- A. Remark was made that there would be the hauling of material off site. Since the project is a balanced job, there would be no off site traffic.
- B. Controlled blasting would be used to minimize the impact outside the wetland.
- C. Vibrations emanating from (controlled) blasting---Vibrations would be felt but would not have an adverse effect on the wetland.
- D. He agrees with the assessment of the geologist from Redding relative to the perched water table.

Ms. Jodi Chase noted it was her that requested that the applicant note in the record that the CERT Report included a number of broad stroke statements. For example, on Page 35, the Report states that run off from the project would affect the wetland. However, it does not explain in any shape or form on how it would impact the wetland. We have plans and hundreds of pages of reports that support our position. The Cert Report contains 35 pages of generalities: whereas, my report contains 35 pages of detailed expert information. I spent 80 hours in the field: whereas, the CERT Team spent a total of four (4) hours on site. There was a gentleman here that discussed the birds of Cedar Mountain. The birds that he noted including the peregrine falcon represent the birds of Cedar Mountain. We are not developing Cedar Mountain. Cedar Mountain as the CERT Team Report points out and the trap rock ridge associated with Cedar Mountain is in the western most portion of the property and would be protected by 44 acres of open space.

Attorney Regan reviewed events over the past four (4) months to include:

- A. The project started out as a 71 lot open space subdivision with 33 acres open space, the filling in of a 1740 square foot wetland (and the creation of a mitigation area to replace the lost wetland).
- B. Four (4) months later following input from the public hearing and comments from Town staff, the development has been reduced to 62 lots with 44 acres of open space, leaving the 1740 square foot wetland in tact and still creating a the mitigation area even though it is not require now. Therefore, with the preservation of the 1740 wetland, there are no activities within the regulated area (wetland). The only activity now would occur within the buffer area of Wetlands 2 and 3. Connecticut State

Statute 22a-41d states a permit must be approved unless it can be shown that an activity (in the buffer area) would result in a specific impact to the wetland.

Commissioner Block noted that the term “fisher” (any animal that catches fish for food or a dark brown or blackish somewhat fox-like marten) was used earlier in the evening). He noted it was not in the report. Do you (Ms. Chase) have any credible knowledge or have seen a report as to its presence on the mountain? Ms. Chase responded that she had no knowledge. She the noted that the appendix of her report included wetland dependent and wetland associated species

Dr. Abrams noted that he and his staff spent many hours onsite over several months and did not see the animal.

Attorney Regan entered a closing statement into the record.

Chairman Pappa noted the Commission had to wait until an application was before it before it could request CERT assistance.

Mr. Ferraro noted that per the rules and regulations of the Commission, once the public hearing is opened, the Commission has 35 days to close it unless the applicant grants an extension. The applicant has granted an additional 65 days. There are no further extensions allowed. Therefore the public hearing must be closed tonight.

Motion made by Commissioner Block to close the public hearing (for Application 2011-02) and was seconded by Commissioner Shapiro. There was no discussion. Vote was 7 yes, 0 no and the motion was carried.

Motion made by Commissioner Block to table Application 2011-02 and was seconded by Alternate Harlow. There was no discussion. Vote was 7 yrs, 0 no and the motion was carried.

ITEM VI OLD BUSINESS

NONE

ITEM VII A Application 2011-02, Russell Road, North of Old Highway

The Public hearing was closed.

ITEM VIII PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

Ms. Rose Lyons, 46 Elton Drive noted the need to secure better microphones.

ITEM IX

COMMUNICATIONS AND REPORTS

- A. A copy of the “Habitat” was passed out to Commission members.
- B. Chairman Pappa announced this was his last meeting since he was resigning from the Commission because he was moving to Rocky Hill.
- C. Commissioner Block noted that (the deficiencies of) the public address system should be a high priority.
- D. Mr. Ferraro noted that this was his last meeting because he is retiring and September 5th is his last day of work.

Motion made by Commissioner Block to adjourn meeting at 10:50 p.m. and was seconded by Commissioner Shapiro. There was no discussion. Vote was 7 yes, 0 no and motion was carried.

Peter M. Arburr, Recording Secretary

Commission Members

Tayna Lane, Town Clerk

Town Manager John Salamone

Edmund Meehan, Town Planner

Councilor Myra Cohen

Chairperson, Town Plan and Zoning

Ben Ancona Jr., Town Attorney

Anthony Ferraro, Town Engineer

Lucy Robbins Wells Library (2)